

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
M. Halter)	Group Art Unit: 2821
)	
Serial No.: 10/802,277)	Examiner: H. Philogene
)	
Filed: March 17, 2004)	
)	
For: SPECTRALLY CALIBRATABLE)	
MULTI-ELEMENT RGB LED)	
LIGHT SOURCE)	

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Attorney Docket No. 57108/367051

Communication Regarding Patent Term Adjustment (PTA)
Indicated in Notice of Allowance

Sir:

1. A Notice of Allowance was mailed on April 3, 2009 for the present application. One of the attachments to the Notice of Allowance was a Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) (attached as Exhibit A), indicating that the total PTA due is 1174 days. It is believed that the correct total PTA to date is actually 1515 days.

2. In accordance with 37 C.F.R. § 1.705(b), this application for patent term adjustment is filed no later than the payment of the issue fee but after the date of mailing of the notice of allowance. It is accompanied by (1) the required fee set forth in 1.18(e); and (2) the required statement of facts and the bases for adjustment.

3. The determination of the total PTA is erroneous because the U.S. Patent and Trademark Office's (PTO) PTA calculator failed to account for the delay under 35 U.S.C. § 154(b)(1)(B) ("B delay"), which guarantees no more than a three-year application pendency. The two PTO delays (the "A delay" and the "B delay") should be added together in accordance with the reasoning in *Wyeth et al. v. Dudas*, 580

F.Supp. 2d 138 (Fed. Cir. 2008). Any overlap between the A Delay and the B Delay should also be subtracted in accordance with *Wyeth*. Applicants' delay should then be subtracted from that total in accordance with 35 U.S.C. § 154(b)(2)(A).

4. "A Delay." Applicants agree with the calculation of 1174 days stated on the attached PTA History, showing a PTO Delay ("A delay") of 1220 days (which is the number of days beginning on the day after the date that is fourteen months after the date on which the application was filed and ending on the date of mailing of an action). However, this only accounts for one of the delays of the PTO.

"B Delay." The other delay ("B delay") warrants a credit totaling 341 additional days for PTO delay under 35 U.S.C. § 154(b)(1)(B) and 37 C.F.R. § 1.702(b). Pursuant to 37 C.F.R. § 1.703(b) (and as outlined on the below chart), this is the number of days from the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) (which was March 17, 2004) and ending on the date a patent issued (which is calculated potentially as being August 25, 2009¹) (891 days) minus the overlap between the A Delay period and the B Delay period (550 days). The result is 341 additional days due (calculated using the duration between the two dates from <http://www.timeanddate.com/date/dateadd.html>), and the correct total PTA credit that should be awarded for this "B delay" is 341 days. The PTA History incorrectly ignored the "Three Years" portion of the PTA calculation, indicating "-" for the Three Year Delay.

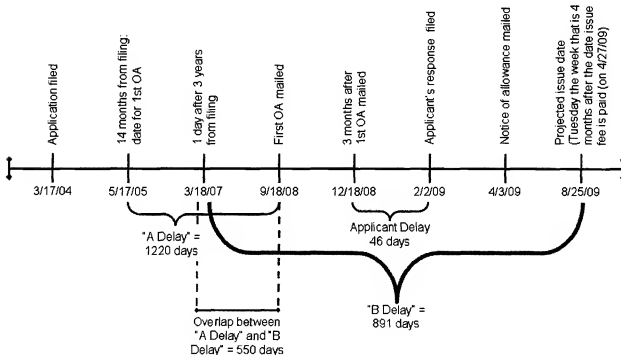
5. Applicants agree with the calculated Applicant Delay of 46 days. The following statement is required by 37 C.F.R. 1.705(b)(2)(iv)(A):

The Response after Non-Final Action filed February 2, 2009 was filed after the three month period for filing a response. Under 37 C.F.R. 1.704(b), the period of adjustment for delay associated with this reply begins on the day after the date that is

¹ For the issue date calculation, Applicants have used the date that issue fee is being paid, 4/27/09, and assumed the patent will issue the Tuesday of the week that is four months from the date of payment of the issue fee, which would be August 25, 2009.

three months after the date of mailing of the September 18, 2008 Office Action and ends on the date that the reply was filed. Thus, the period of delay runs from December 18, 2008 to February 2, 2009. This period of delay is calculated by the PTO as 46 days.

6. Applicants believe that the total PTA credit should thus be 1515 days. This is the total of the PTO A Delay (1220 days) + B Delay (891 days) minus the overlap between the "A Delay" and "B Delay" periods (550), minus Applicants' delay (46 days) = 1515 total days. The below chart reflects Applicants' reasoning and shows the relevant dates at issue:



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8. Any patent granted on this application is not subject to a terminal disclaimer. *See* 37 C.F.R. § 1.705(b)(2)(iii).

The Commissioner is authorized to charge any additional fees that may be due or credit any overpayment to Deposit Account No. 11-0855.

Respectfully submitted,



Dean W. Russell
Reg. No. 33452
Attorney for Assignee

KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309
Telephone: 404-815-6528

Attachment: Exhibit A – Copy of PTA History for this Application

Exhibit A



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 107
Alexandria, Virginia 22304-0107
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DCKET NO.	CONFIRMATION NO.
10/802,277	03/17/2004	Michael A. Haller	16990-52543-B	4213
23170 7388 04-01-2009			EXAMINER	
JOHN S. PRATT, ESQ. KILPATRICK STOCKTON, L.P. 1100 PEACHTREE STREET SUITE 2800 ATLANTA, GA 30309			PHILOGENE, LUISA	
			ART UNIT	PAPER NUMBER
			2821	
			DATE MAILED: 04/03/2009	

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 1174 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 1174 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

10/802,277	SPECTRALLY CALIBRATABLE MULTI-ELEMENT RGB LED LIGHT SOURCE	04-20-2009:09:22:33
Patent Term Adjustments		
Patent Term Adjustment (PTA) for Application Number: 10/802,277		
Filing or 371(c) Date:	03-17-2004	USPTO Delay (PTO) Delay (days): 1220
Issue Date of Patent:	-	Three Years: -
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days): 46
Post-Issue Petitions (days):	+0	Total PTA (days): 1174
USPTO Adjustment(days):	+0	Explanation Of Calculations
Patent Term Adjustment History		
Date	Contents Description	PTO(Days) APPL(Days)
04-03-2009	Mail Notice of Allowance	
03-31-2009	Document Verification	
03-31-2009	Notice of Allowance Data Verification Completed	
03-31-2009	Case Docketed to Examiner in GAU	
03-10-2009	Date Forwarded to Examiner	
02-02-2009	Response after Non-Final Action	46 *
02-02-2009	Request for Extension of Time - Granted	+
10-20-2008	Change in Power of Attorney (May Include Associate POA)	+
10-16-2008	Correspondence Address Change	+
09-18-2008	Mail Non-Final Rejection	1220 ✓
09-15-2008	Non-Final Rejection	+
03-17-2004	Information Disclosure Statement considered	+
03-21-2008	Case Docketed to Examiner in GAU	+
03-06-2008	Case Docketed to Examiner in GAU	+
03-06-2008	Case Docketed to Examiner in GAU	+
01-16-2008	Case Docketed to Examiner in GAU	+
12-19-2007	Case Docketed to Examiner in GAU	+
08-27-2007	Request for Classification Division Decision	+
03-17-2004	Information Disclosure Statement (IDS) Filed	+
07-13-2007	Transfer Inquiry to GAU	+
06-09-2007	Transfer Inquiry to GAU	+
06-09-2007	Transfer Inquiry to GAU	+
03-18-2007	Transfer Inquiry to GAU	+
12-13-2006	Transfer Inquiry to GAU	+
03-17-2005	Reference capture on IDS	+
10-12-2005	Transfer Inquiry to GAU	+
05-26-2005	Transfer Inquiry to GAU	+
10-01-2004	IFW TSS Processing by Tech Center Complete	+
09-09-2004	Reference capture on IDS	+
09-09-2004	Information Disclosure Statement (IDS) Filed	+
09-09-2004	Information Disclosure Statement (IDS) Filed	+

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08-31-2004	Application Return from OIPE	+
08-31-2004	Application Return TO OIPE	+
08-31-2004	Application Dispatched from OIPE	+
08-31-2004	Application Is Now Complete	+
08-03-2004	Additional Application Filing Fees	+
08-03-2004	Applicant has submitted new drawings to correct Corrected Papers problems	+
06-03-2004	Corrected Paper	+
04-13-2004	Cleared by OIPE CSR	+
04-02-2004	IFW Scan & PACR Auto Security Review	+
03-17-2004	Initial Exam Team nn	+

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